



NATURAL GAS PIPELINE SAFETY ENFORCEMENT

*Kentucky PSC and PHMSA T&Q Pipeline Safety Seminar
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KRS 278.495 – Authority to Regulate Safety Aspects of Natural Gas Facilities

- KRS is the source of the Commission's authority to regulate the safety of natural gas systems owned or operated by any utility or municipality.
- The statute expressly authorizes the Commission to enforce federal minimum pipeline safety standards.



KRS 278.992 – Penalty for Certain Pipeline Violations

(1) Any person who violates any minimum safety standard adopted by the United States Department of Transportation pursuant to the federal pipeline safety laws . . . or any regulation adopted . . . by the Public Service Commission governing the safety of pipeline facilities or the transportation of gas . . . shall be subject to a civil penalty to be assessed by the Public Service Commission not to exceed the maximum civil penalty as contained in 49 C.F.R. sec. 190.223, as amended . . . for each violation for each day that the violation persists.



Senate Bill 104

- General Assembly amended KRS 278.992(1) in 2018 to update our natural gas safety penalty structure and make it consistent with the federal program. Ensuring that the Commission's enforcement powers are as stringent as the federal structure helps ensure that the Commission maintains its certification from PHMSA to exercise safety authority over intrastate pipelines.
- SB 104 removed language in 278.992(1) that limited the maximum penalty amount to that set forth in 49 CFR 190.223 **“as of December 31, 2011.”** Now the state penalty maximum will change if the federal penalty structure is adjusted.
- Change took effect July 14, 2018.



KRS 278.992 – Penalty for Certain Pipeline Violations

- As of July 31, 2019, the maximum civil penalty under 49 C.F.R § 190.223 is **\$218,647** for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed **\$2,186,465** for any related series of violations.



KRS 278.992 – Penalty for Certain Pipeline Violations

In determining the amount of the penalties, the Commission is . . . mindful of the dual purpose of civil penalties. **“While the fines imposed may be intended to punish [the violator], they are also designed to deter similar conduct in the future.”** Fines are intended to deter further violations by both the fined party and others similarly situated.



KRS 278.992(1) – Penalty Assessment Factors

In determining the amount of the penalty, the statute mandates that the Commission consider:

1. the appropriateness of the penalty to the **size of the business** of the person charged,
2. the **gravity** of the violation,
3. and the **good faith** of the person charged in attempting to achieve compliance, after notification of the violation.



KRS 278.992(1) – Penalty Assessment Factors

The Commission has also referenced the assessment considerations set forth in 49 CFR § 190.225:

1. The nature, circumstances and **gravity** of the violation, including adverse impact on the environment;
2. The degree of the respondent's **culpability**;
3. The respondent's history of **prior offenses**;
4. Any **good faith** by the respondent in attempting to achieve compliance; and
5. The effect on the respondent's **ability to continue in business**.



KRS 278.992(1) – Penalty Assessment Factors

PHMSA also may consider under 49 CFR § 190.225 :

1. The **economic benefit** gained from the violation, if readily ascertainable, without any reduction because of subsequent damages; and
2. Such other matters as justice may require.



Enforcement – Two Scenarios

1. Staff conducts an inspection of a gas system and cites an operator for violation of minimum pipeline safety standards.
2. Staff investigates an “incident” reported to the Commission by an operator and cites an operator for violation of minimum pipeline safety standards.



Enforcement- Incident

An operator is required to report as soon as practical but no later than one hour after an “incident” occurs. An incident is defined by 49 CFR §191.3 as a release of gas that results in:

1. Death or personal injury requiring in-patient hospitalization;
2. Estimated property damage in excess of \$50,000; or
3. An unintentional estimated gas loss of 3 million cubic feet or more.

An operator that is a jurisdictional utility also must report to the Commission an outage that results in loss of service to 40 or more customers for 4 or more hours.



Enforcement- Incident

- 807 KAR 5:027 was amended effective May 4, 2018 to expressly adopt the federal incident reporting obligation in 49 CFR Part 191.
- Prior to the amendment of 5:027, operators also were required to report within 2 hours of discovery of any incident that:
 1. Require taking a segment of pipeline or main out of service;
 2. Resulted in gas ignition;
 3. Caused estimated property damage of \$25,000 or more;
 4. Caused the loss of a “sizable” amount of gas; or
 5. Received extensive news coverage or it otherwise considered significant by the operator.



Enforcement

Once Commission Staff determines that a violation has occurred, enforcement will be pursued in one of the following ways:

1. If the violation is not serious, such as an isolated and minor record-keeping error, and the operator has a history of good faith compliance, Commission Staff may decline to take enforcement action if the operator promptly cures the deficiency;
2. Commission Staff may issue a Demand for Remedial Measures and Penalty Assessment; or
3. If the situation presents an imminent threat to public safety or pipeline integrity, the Commission may proceed directly with a formal enforcement case.



Enforcement – Demand Letter

- A demand letter cites an operator for a safety violation and gives the operator an opportunity to resolve the matter by payment of a proposed fine and completion of required remedial measures.
- An operator may accept the terms of the demand letter or contest the proposed penalty assessment or remedial measures and request a hearing before the Commission.
- An operator's acceptance of the terms of the demand letter is not deemed an admission by the operator that it willfully violated any safety standard.
- Staff uses the same penalty assessment factors as the Commission in setting the amount of the proposed fine.



Enforcement – Demand Letter

- Following payment of the fine and completion of remedial measures, the Commission will enter an order formally closing the investigation.
- If the operator contests the demand letter, the Commission will institute a formal show cause proceeding and hold a public evidentiary hearing.



City of Liberty, No. 2017-00053

- This case was initiated based on safety violations cited during a periodic inspection by Staff in 2016.
- Following hearing, the Commission found Liberty that **failed to perform leakage surveys** between 2009-2016 as required by federal pipeline safety standards.
- The Commission further found that Liberty had an extensive **history of non-compliance** between 2003 and 2016 with leakage survey requirements.



City of Liberty, No. 2017-00053

- Assessment factors applied by the Commission:
 1. **Gravity** – The Commission found Liberty’s violations to be serious. During the period at issue, Liberty performed only 4 of the 19 required surveys. Liberty’s failure adhere to safety standards or to follow its written operating procedures created a serious and unacceptable risk of accidental gas ignition.
 2. **Good Faith** – The Commission found no evidence that Liberty attempted in good faith to achieve compliance. Liberty had repeatedly offered assurances to Commission Staff that it would take steps to comply but failed to do so.



City of Liberty, No. 2017-00053

The Commission assessed a total penalty in the amount of **\$60,000**. The Commission suspended all but **\$10,000** contingent on Liberty's documented compliance with specified remedial measures.



City of Flemingsburg, No. 2017-0079

- This case was based on a January 28, 2016 incident in which gas leaking from a plastic saddle on a service line ignited, injuring a city employee.
- Commission Staff investigated and determined that at the time of the incident, a city employee was using an electric impact wrench to install a temporary clamp when a spark from operation of the wrench ignited the gas. The employee suffered injuries and was hospitalized overnight.



City of Flemingsburg, No. 2017-0079

Following a formal evidentiary hearing, the Commission found that Flemingsburg committed 4 violations of pipeline safety standards:

1. Flemingsburg **failed to follow the procedure in its O&M manual** to remove each ignition source from the area when gas is being vented into the open air.
2. Flemingsburg **failed to remove each potential ignition source** from an area when a hazardous amount of gas is being vented.
3. Flemingsburg **failed to drug test** members of the work crew within 32 hours after the accident.
4. Flemingsburg failed to test work crew members for **alcohol** as soon as practicable after the accident.

In light of the overlap between 1 and 2, the Commission determined that Flemingsburg should be assessed a civil penalty for 3 violations.



City of Flemingsburg, No. 2017-0079

Assessment factors applied by the Commission:

1. **Gravity** – The Commission found the gravity of the Flemingsburg crew’s use of the impact wrench to be serious. The conduct was in blatant disregard of federal standards and Flemingsburg O&M manual, and resulted in serious injury requiring hospitalization. The Commission found Flemingsburg’s failure to conduct post-accident drug and alcohol tests to be less serious because the failure to test was not a causal or contributing factor to the accident.
2. **Good faith** – The Commission determined the actions Flemingsburg took to prevent repeat violations were measures any prudent operator would take and did not warrant a reduction in penalties.



City of Flemingsburg, No. 2017-0079

Assessment factors applied by the Commission (cont.):

- 3. Size of Business** – The Commission found that the financial condition of the city’s utility system warranted a conditional suspension of a portion of the total assessed penalty.



City of Flemingsburg, No. 2017-0079

The Commission assessed Flemingsburg a penalty of:

- \$50,000 for the failure to remove a potential ignition source when gas was being vented into the air;
- \$5,000 for failing to conduct a post-accident drug test; and
- \$5,000 for failing to conduct a post-accident alcohol test,

for a total penalty in the amount of **\$60,000**.

The Commission suspended \$30,000 of this amount on the condition that Flemingsburg complete specified remedial training.



Louisville Gas & Electric Co., No. 2017-00119

- This case was based on a September 17, 2014 incident when a mechanical coupling on a 12-inch transmission pipeline failed, resulting in the rupture of the pipeline. The force of the separation resulted in flying debris that caused damage to nearby houses and injured 2 crew workers.
- A post-accident failure analysis performed on behalf of LG&E determined that the coupling that failed and another coupling examined as part of the investigation had not been properly installed.



Louisville Gas & Electric Co., No. 2017-00119

Commission Staff conducted an investigation and determined that:

1. The installation of the 12-inch coupling failed to adhere to 3 separate installation specifications, and that each violation contributed to the failure of the coupling.
2. The installation of the 8-inch coupling failed to adhere to specification.
3. LG&E failed to properly inspect the welding on the 12-inch coupling that failed.
4. The as-installed maximum allowable operating pressure was less than the rated MAOP due to the defective installation, and that as a result, the pipeline had been operated in excess of its MAOP on at least 5 days since May 1, 2011.



Louisville Gas & Electric Co., No. 2017-00119

Following an evidentiary hearing, the Commission found LG&E committed the following violations of pipeline safety standards:

1. Three counts of failing to follow specification requirements in its procedures manual in the installation of the 12-inch coupling that failed in violation of 49 CFR § 192.605(a).
2. On counts of failing to follow specification requirements in its procedures manual in the installation of an 8-inch coupling in violation of 49 CFR § 192.605(a).
3. Failure to properly inspect the welding in violation of 49 CFR § 192.241.
4. Operation of the 12-inch transmission line in excess of the as-installed MAOP of the failed coupling on 74 days since installation in violation 49 CFR § 192.619(a).



Louisville Gas & Electric Co., No. 2017-00119

Assessment factors applied by the Commission:

1. Gravity

- a. The Commission found the gravity violations relating to the improper installation of the failed 12-inch coupling to be of the highest level. Each violation was a contributing factor to an accident that resulted in personal injury requiring hospitalization and approximately \$1,324,000 of property damage and response costs. The accident occurred in a populated “high consequence area” such that had there been ignition the results could have been catastrophic and could have resulted in loss of life and the destruction of homes. The accident resulted in loss of service to approximately 2,400 customers and the release of 7,000 mcf of gas.



Louisville Gas & Electric Co., No. 2017-00119

Assessment factors applied by the Commission:

1. Gravity (cont.)

- b. The Commission found the violation relating to the improper installation of the 8-coupling to be high. The violation compromised a critical component on an 8-inch pipeline located in an HCA. The violation was not a causal factor of the accident and did not contribute to its severity.
- c. The Commission found the failure to inspect the welding on the failed coupling to be high. It occurred in an HCA. A proper inspection would have shown the coupling was improperly installed and thus could have prevented the accident.



Louisville Gas & Electric Co., No. 2017-00119

Assessment factors applied by the Commission:

1. Gravity (cont.)

- c. The Commission found the operation of the 12-inch pipeline at a pressure in excess of its MAOP to be moderate. The violation occurred in an HCA. The pipeline was not operated at an excess pressure on the day of the accident, and there was no evidence that prior MAOP violations were a causal factor in the accident or contributed to its severity. The MAOP violations would not have occurred but for defective installation and inspection of the coupling.



Louisville Gas & Electric Co., No. 2017-00119

Assessment factors applied by the Commission:

2. Good Faith

- a. The Commission determined the actions LG&E took to ensure future compliance with installation procedures and specifications were measures any prudent operator would take and did not warrant a reduction in penalties.
- b. Regarding the MAOP violation, the Commission gave LG&E credit for pro-actively seeking out and replacing other mechanical couplings on its system to remedy any other instances where, unbeknownst to the operator, a pipeline is operating above its MAOP solely due to a defective installation.



Louisville Gas & Electric Co., No. 2017-00119

Assessment factors applied by the Commission:

3. Size of Business

The Commission found that due to LG&E's size, assessment of a large penalty would have minimal impact on its ability to continue in business. No penalty abatement was warranted.



Louisville Gas & Electric Co., No. 2017-00119

The Commission assessed a penalty in the total amount of **\$395,000**, calculated as follows:

- **\$100,000** for each of the 3 violations in connection the installation of the coupling that failed.
- **\$30,000** for the violation in connection with the installation of the 8-inch coupling.
- **\$50,000** for the failure to properly inspect the weld on the 12-inch coupling.
- **\$15,000** for the MAOP violations.



City of Olive Hill, No. 2017-00167

- This case was initiated based on 10 safety violations cited during a periodic inspection by Staff in 2015. One of the violations was an exposed pipeline in Tygarts Creek.
- In a follow-up inspection in 2016, Staff determined that Olive Hill had corrected 9 of the violations but that the pipeline remained exposed in the creek, subject to washouts, floods and other hazards.
- Following the hearing, the Commission found that Olive Hill was in violation of 49 § 192.317 for failing to take all practical steps to protect the pipeline from washouts, floods and other hazards.



City of Olive Hill, No. 2017-00167

- The Commission assessed Olive Hill a penalty in the amount of **\$60,000**, but suspended all but \$5,000 on the condition that Olive Hill replace the exposed section of pipe with 30 days of the date of the order.
- The Commission found that the exposed pipeline was the main feeder for the entire Olive Hill gas system, and that its failure could cause severe customer hardship and pose a serious risk of injury to anyone in the proximity.
- The Commission also found that Olive Hill had been aware of the violation for over a year and had yet to remediate it.
- Directing Olive Hill to spend the bulk of the fine on correcting the problem was appropriate considering the size of Olive Hill's system.



Closure of Investigation

Columbia Gas of Kentucky, Inc., No. 2018-00266

Louisville Gas & Elec. Co., No. 2018-00267

- These cases are examples of enforcement matters resolved through the demand letter process.
- Both cases involved accidental ignition caused by welding on pipe that still contained a combustible mixture of gas and air.
- There were no injuries requiring overnight hospitalization.
- In both cases, the operator failed to notify the Commission of the incident within 2 hours of discovery as then required by 807 KAR 5:027. (Now it's one hour, and hospitalization required for incident to be reportable.)



Closure of Investigation

Columbia Gas of Kentucky, Inc., No. 2018-00266

Louisville Gas & Elec. Co., No. 2018-00267

- Staff issued demand letters to each operator, and proposed fines of \$30,000 to Columbia and \$55,000 to LG&E (2 ignitions)
- The operators paid the proposed fines and completed required remedial steps.
- The Commission opened proceedings and entered final orders formally closing the investigation.



Closure of Investigation

Columbia Gas of Kentucky, Inc., No. 2018-00266

Louisville Gas & Elec. Co., No. 2018-00267

- Two things about these case are worth noting:
 1. If an operator fails to notify the Commission of an incident within an hour of learning of a reportable incident, the operator should expect to be fined.
 2. The operator is held responsible for the safety violations of its contractors.



City of Drakesboro, No. 2019-00065

- The Commission initiated this proceeding following a standard periodic inspection by Commission Staff of the city's gas system this past February.
- In its Inspection Report, Commission Staff cited Drakesboro for more than 35 alleged violations. Based on the threat of imminent hazard to public safety, the Commission proceeded directly to a formal case.



City of Drakesboro, No. 2019-00065

- Following a public hearing, the Commission entered an interim order directing Drakesboro:
 1. To use a qualified third-party contractor to operate its gas system,
 2. To perform a leakage survey of its entire system within 30 days of the date of the order,
 3. To file bi-weekly status reports on its compliance efforts, and
 4. To take other measures to reduce threats to the integrity and safety of the gas system.



City of Drakesboro, No. 2019-00065

- Currently the integrity of the city's distribution system is being assessed in order to determine what measures must be taken to assure the safe operation of the system.
- The Commission will schedule another hearing to receive evidence regarding the results of the system evaluation before making a decision on penalty assessment.



City of Augusta, No. 2019-00188

- The Commission initiated this proceeding following a standard inspection of the city's gas system in September 2018.
- Staff cited the city for 11 violations of minimum pipeline safety standards, including:
 - Improper configuration of regulator stations;
 - failure to conduct a business district leakage survey in 2017;
 - failure to maintain records.



City of Augusta, No. 2019-00188

- Staff issued a demand letter to the city based on its findings of violation.
- The city declined to accept the terms of the demand letter and requested a hearing before the Commission.
- The Commission held a formal hearing on August 20, 2019.
- Following the hearing, the Commission entered an order directing DOI to file a post-hearing brief by September 20, 2019. The city will then have 2 weeks to file its brief.
- The demand letter is not in the record and will not be considered by the Commission in entering a final order.



QUESTIONS?

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